TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~568~~ 311

JOHN CARROLL BRENT, SURVIVING EXECUTOR OF NORAH DIGGS, DECEASED, PLAINTIFF IN ERROR,

vs.

THE STATE OF MARYLAND, FOR THE USE OF AUGUSTUS M. WARFIELD AND SUSAN E., HIS WIFE, OVERTON C. BOTELER, J. S. BOTELER, BY HIS NEXT FRIEND, SUSAN BOTELER.

IN ERROR TO THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

FILED DECEMBER 21, 1871.

SUPREME COURT OF THE UNITED STATES.

No. 563.

JOHN CARROLL BRENT, SURVIVING EXECUTOR OF NORAH DIGGS, DECEASED, PLAINTIFF IN ERROR,

vs.

THE STATE OF MARYLAND, FOR THE USE OF AUGUSTUS M. WARFIELD AND SUSAN E., HIS WIFE, OVERTON C. BOTELER, J. S. BOTELER, BY HIS NEXT FRIEND, SUSAN BOTELER.

IN ERROR TO THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

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3 The answer of the chief justice and justices of the supreme court of the District of Columbia, within named.

The record and proceedings whereof mention is within made follow in these words, to wit:

Declaration.

In the supreme court of the District of Columbia, February 16th, 1870

THE STATE OF MARYLAND, FOR THE USE OF Augustus M. Warfield & Susan E. Warfield, his wife, Overton C. Boteler, and James Spencer Boteler, by his next friend, Susan Boteler, plaintiffs, *v.* JOHN CARROLL BRENT, SURVIVING EXECUTOR of Norah Diggs, dec'd, def't. } At law. No. 6719.

4 That the defendant's testratrix, by her certain bond, became bound to the plaintiff in the sum of fifteen thousand dollars, to be paid by the defendant to the plaintiff, which said bond was subject to a condition thereunder written, in the words and figures following, to wit:

"Whereas, by a decree of the circuit court for Prince George County, bearing date on the twenty-fifth day of January, in the year eighteen hundred and fifty-three, and passed in a cause wherein Overton L. Warner is complainant, and Susan Boteler, administratrix of William Boteler, deceased, and others are defendants, the above-bound Daniel C. Diggs has been appointed trustee to make sale of certain real estate in the proceedings in said cause mentioned: Now, the condition of the above obligation is such, that if the above Daniel C. Diggs do and shall well and faithfully perform the trust reposed in him by said decree or that may be reposed in him by any future decree or order in the premises, then the above obligation to be void; otherwise
5 to remain in full force and virtue in law." And the said Daniel C. Diggs did make sale of the lands in said proceedings mentioned, but did not faithfully perform the trust reposed in him, but failed to pay over and account for the money which came into his hands as the proceeds of said sales.

And the plaintiff claims judgment for fifteen thousand dollars.

By S. S. HENKLE,
Att'y for Pl'ff.

The defendant is to plead hereto on or before the first special term occurring twenty days after service; otherwise judgment.

S. S. HENKLE,
Att'y for Pl'ff.

Summons.

In the supreme court of the District of Columbia, the 17th day of February, 1870.

THE STATE OF MARYLAND, FOR THE USE of Augustus M. Warfield & Susan E.
6 Warfield, his wife, Overton C. Boteler, and James Spencer Boteler, by his next friend, Susan Boteler, plaintiffs, *v.* JOHN CARROL' BRENT, SURVIVING EXECUTOR of Norah Diggs, dec'd, def't. } At law. No. 6719.

The President of the United States to the defendant, greeting:

You are hereby commanded to appear in this court, on the first day of its special term, occurring twenty days after service of this writ on you to answer the plaintiffs' suit, and show why he should not have judgment against you for the cause of action stated in his declaration.

Witness D. K. Cartter, chief justice.

[SEAL OF COURT.] R. J. MEIGS, *Clerk.*

Hinkle.

NOTE.—The special terms of the court commence on the first Tuesday of every month, except May, in which month they commence on the third Monday, and August, in which month there is no court.

7 On back:

Served copies of the declaration, notice to plead, and this summons, on the defendant, the 29 day of Feb'ry, 1870.

A. SHARP, *Marshal.*

Pleas.

In the supreme court of the District of Columbia, this 24th day of February, A. D. 1870.

JOHN CARROLL BRENT, EXECUTOR,
ats.
STATE OF MARYLAND, USE OF A. M. WARfield & others. } At law. No. 6719.

1st. The defendant says that the said Daniel C. Diggs did not make sale of the lands in said proceedings mentioned.

2. And the defendant further says that the said Daniel C. Diggs did faithfully perform the trust reposed in him.

8 3. And the defendant further says that the said Daniel C. Diggs did pay over and account for the money which came to his hand by the proceeds of said sale.

4. And the defendant further saith that the alleged cause of action did not accrue within twelve years prior to the institution of this suit.

5. And the defendant further saith that the plaintiffs, for whose use this action is entered, have no cause of action or right or title to institute an action on said bond of said Diggs.

R. J. BRENT,
For Defendant.

Joinder in issue.

In the supreme court of the District of Columbia, the 10th day of May, A. D. 1870.

JOHN CARROLL BRENT, EXECUTOR,
vs.
THE STATE OF MARYLAND, USE OF A. M. Warfield. } At law. No. 6719.

9 The plaintiff joins issue upon the defendants' 1st, 2nd, 3rd, 4th, and 5th pleas.

HENKLE & INGERSOLL,
Atty's for Pl'ff

Notice for trial.—Filed May 10, 1870.

In the supreme court of the District of Columbia, the 10 day of May, A. D. 1870.

Henkle & Ingersoll, att'ys for pl'ff.
R. J. Brent, att'y for def't.

BETWEEN { JOHN CARROLL BRENT, DEFT., EXECUTOR, *and* STATE OF MARYLAND, USE OF WARFIELD, PL'FF. } At law. No. 6719.

Last pleading filed the 10th day of May, A. D. 1871.

HENKLE & INGERSOLL,
Att'ys for Pl'ff.

To the CLERK.

Proceedings of court.

10 Proceedings before the supreme court of the District of Columbia, holding a special term and circuit court for said district, commencing the third Monday (23d day) of January, A. D. 1871.

MONDAY, *January* 23*d*, 1871.

The court commences its session by proclamation of the marshal, by order of Chief Justice Carter, presiding.

TUESDAY, *April* 18, 1871.

Session resumed pursuant to adjournment. Present, Chief Justice, Carter presiding.

THE STATE OF MARYLAND, FOR THE USE OF Augustus M. Warfield and Susan E. Warfield, his wife, Overton C. Boteler, & James Spencer Boteler, by his next friend; Susan Boteler, plaintiff',
v.
JOHN CARROLL BRENT, SURVIVING EXECUTOR of No'ah Diggs, dec'd, def't. } At law. No. 6719.

This case is certified to the general term, to be heard there in the first instance.

11 *Amended declaration.—Filed by leave of the court, Octo.* 14, 1871.

In the supreme court of the District of Columbia, sitting in general term. Octo. term, 1871.

THE STATE OF MARYLAND, FOR THE USE OF Augustus M. Warfield and Susan E. Warfield, his wife, Overton C. Boteler, and James Spencer Boteler, by his next friend, Susan Boteler, pl'ff.,
v.
JOHN CARROLL BRENT, SURVIVING EXECUTOR of No'ah Diggs, dec'd, def't. } At Law No. 6719.

The plaintiff, by leave of the court, first had and obtained, now comes and files this its amended declaration, and says—

That the defendant's testratrix, by her certain bond, became bound to the plaintiff in the sum of fifteen thousand dollars, to be paid by the defendant to the plaintiff, which said bond was subject to a condition thereunder written, in the words and figures following, to wit:

12 "Whereas, by a decree of the circuit court of Prince George's County, bearing date on the twenty-fifth day of January, in the year eighteen hundred and fifty-three, and passed in a cause wherein Overton L. Warner is complainant, and Susan Boteler, administratrix of William Boteler, dec'd, and others, are defendants, the above-bound Daniel C. Diggs has been appointed trustee to make sale of certain real estate in the proceedings in said cause mentioned: Now, the condition of the above obligation is such, that if the above Daniel C. Diggs do and shall well and faithfully perform the trust reposed in him by said decree, or that may be reposed in him by any future decree or order in the premises, then the above obligation to be void; otherwise to remain in full force and virtue in law." And the said Daniel C. Diggs, as such trustee, did make sale of the lands in said proceedings mentioned, and did report his proceedings in the premises to the court.

And the said court, on the 11th day of April, 1860, ordered the said trustee to pay, out of the funds in his hands arising from

13 the sale of the lands refered to in the proceedings in said cause, to Elizabeth S. Boteler, seven hundred and four & $\frac{39}{100}$ dollars, ($704 $\frac{39}{100}$.) to William A. Boteler, seven hundred and four & $\frac{39}{100}$ dollars, ($704 $\frac{39}{100}$;) to Overton C. Boteler, seven hundred and four & $\frac{39}{100}$ dollars, ($704 $\frac{39}{100}$,) and to James S. Boteler, seven hundred and four & $\frac{39}{100}$ dollars, ($704 $\frac{39}{100}$.) Of which said order the said trustee had due notice, but he did not pay over said moneys to the above-named parties, whereby the obligations of said bond became absolute.

And the plaintiff claims judgment for the sum of fifteen thousand dollars.

By S. S. HENKLE,
Att'y for Pl'ff.

Agreement.

STATE
v.
BRENT, EX'R OF DIGGS. } At law. No. 6719.

Agreement of parties.

The demurrer filed by defendant is withdrawn, and the defend-

14 ant's pleas heretofore filed are to be considered as refiled to the amended declaration.

Oct. 17, 1871.

S. S. HENKLE,
For Plaintiff'.
BRENT & CRITTENDEN,
For Defendant.

Case stated.

STATE OF MARYLAND FOR THE USE A. M. WARfield, et al.,
vs.
BRENT, EXECUTOR OF DIGGS.

It is agreed in this case, that Exhibit 1, is the trustee's bond on which this suit was brought; that the said Daniel C. Diggs was the

complainant's solicitor in the bill filed by the creditors of William Boteler, deceased, for a sale of his real estate.

That, as such trustee, he sold the real estate and received the proceeds as shown in the annexed auditor's reports and accounts, marked Auditor's report, "A, B, C, D, E, and F."

That there is no evidence of notice of the ratification of Account
15 F; and the order of the court set forth in the declaration, other than what, if any, may be implied from the said trustee being solicitor for the complainant and trustee named in the proceedings, and that the equitable plaintiffs in this case were minors, and had no guardians until 1866; that said trustee died about a year after the ratification of said account; that no demand was ever made, by or on behalf of the equitable plaintiffs, on said trustee, for the amounts awarded by said auditor's report. (Account "C" relates, one to the personal estate of Daniel C. Diggs, and the other to the estate of William Boteler, and are, with all other papers under seal, made part hereof.)

And if upon this statement of facts the court shall be of opinion that the plaintiff is entitled to recover, judgment is to be entered for such sums as the court may award; but if the court shall be of opinion against the right of the plaintiff to recover, judgment shall be entered for the defendant.

S. S. HENKLE,
Att'y for Pl'ff.
BRENT & CRITTENDEN,
Att'ys for Def't.

16 EXHIBIT 1.

Know all men by the presents that we, Daniel C. Digges, No'ah Digges' and Charles Digges, all of Prince George's County, in the State of Maryland, are held and firmly bound unto the State of Maryland, in the full and just sum of fifteen thousand dollars, current money, to be paid to the said State of Maryland or its certain attorneys; to which payment, well and truly to be made and done, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents, sealed with our seals, and dated the twelfth day of February, in the year one thousand eight hundred and fifty-three.

Whereas, by a decree of the circuit court for Prince George's County, in the State of Maryland, sitting as a court of equity, bearing date on the twenty-fifth day of January, in the year one thousand eight hundred and fifty-three, and passed in a cause wherein Overton C. Warner is complainant, and Susan Boteler, administratrix of William Bote-
17 ler, deceased, and others, are defendants, the above-bounden Daniel C. Digges, has been appointed trustee to make sale of certain real estate in the proceedings in said cause mentioned.

Now, the condition of the above obligation is such, that if the above-bounden Daniel C. Diggs do and shall well and faithfully perform the trust reposed in him by said decree, or that may be reposed in him by any future decree or order in the premises, then the above obligation to be void; otherwise to remain in full force and virtue in law.

DANIEL C. DIGGES. [SEAL.]
NORAH DIGGES. [SEAL.]
CHARLES DIGGES. [SEAL.]

Signed, sealed, and delivered in presence of—
NORAH T. DIGGES.

I hereby certify that the sureties to the above bond are good and sufficient for the penalty thereof.

March 24th, 1853.

JOHN H. SANSBURY, *J. P.*

April 5th, 1853. Security approved.

PETER W. CRAIN.

STATE OF MARYLAND,
Prince George's County, sct:

18 I hereby certify that the aforegoing is truly taken and copied from the original now on file in No. 5 equity in the circuit court for Prince George's County.

In testimony whereof I have hereunto subscribed my name and affixed the seal of the circuit court for Prince George's County, this 9th day of March, anno Domini 1870.

[SEAL OF COURT.] HENRY BROOK,
Clerk of C. C. for Prince Geo.'s Co., Md.

RECORD IN CASE NO. 5, EQUITY, PRINCE GEORGE'S COUNTY, MD.

Bill of complaint.

To the Honorable Peter A. Crain, judge of the circuit court for Prince George's County, in chancery:

The bill of complaint of Overton C. Warner, of said county, who sues, as well for himself as all others, creditors of William Boteler, late of said county, deceased, who will come in and contribute to the expenses of this suit, humbly shows that a certain William Boteler, late of
19 said county, deceased, was, in his life-time, indebted unto your orator in the sum of two thousand one hundred and fourteen dollars and eighty-eight cents for sundry matters and things properly charg'able in account, as by your orator's Exhibit A, herewith filed as a part of his bill of complaint, will more fully appear.

And your orator further charges that the said William Boteler, being indebted, as aforesaid, unto your orator, and, also, unto divers other persons, in large sums, and having a considerable real estate, but a personal estate of small value, departed this life, on or about the third day of December, one thousand eight hundred and fifty-one, intestate, leaving a widow, Susan Boteler, and the four following children: Elizabeth S. Boteler, William A. Boteler, Overton Boteler, and James S. Boteler, who are heirs at law; all of which said children are infants under the age of twenty-one years.

And your orator further charges that administration of all and
20 singular the personal estate of said William Boteler, hath been lately granted, by the orphans' court of Prince George's County, unto the said Susan Boteler, (the widow of said intestate,) who, in virtue thereof, has possessed herself of the said personal estate; but your orator is informed and therefore charges that the same is very inconsiderable in value, and entirely insufficient and inadequate to discharge all the debts due and owing by the said intestate at the time of his death. And your orator is advised that the said insufficiency and deficiency in the said personal estate ought to be supplied by a sale of the real estate of his aforesaid debtor. And your orator charges that he is unable to obtain adequate relief against the said real estate without the aid of this honorable court.

To the end, therefore, that the defendants hereinafter named may answer the several matters and things hereinbefore set forth, as fully and particularly as if the same were here again repeated, and they
21 were thereunto interrogated, and that the said Susan Boteler, administratrix of the said William Boteler, may also set forth an account of the personal estate of her intestate, and the amount and particulars thereof possessed by her, and what debts due by said intestate have been paid in part by her, and to what amount they remain unsatisfied; and that the said personal estate may be applied in a due course of administration and the payment of the debts due to your orator and all other creditors who may come in and contribute to the expenses of this suit. And that the said real estate, or so much thereof as may be necessary for the purpose, may be decreed to be sold for the payment of the aforesaid debt of your orator and of the other debts of said intestate as may remain unsatisfied by the application of the personal estate, as aforesaid; and that your orator may have such other and further relief as his case may require.

May it please your honor to grant unto your orator the writ of subpœna against the said Susan Boteler, administratrix of the said William Boteler, and the said Elizabeth S. Boteler, William A.
22 Boteler, Overton C. Boteler, and James S. Boteler, infants of tender years and heirs-at-law of said William Boteler, all of Prince George's County aforesaid, commanding them to appear in this honorable court at some certain day to be therein named, to answer the premises and to abide by and perform such decree as may be passed therein. And as in duty bound, &c.

D. C. DIGGES,
Sol. for Complainant.

EXHIBIT A.

Mr. William Boteler, in ac't with Overton C. Warner, Dr.

To one year's board for self, from Dec'r 18, 1841, to December 18, 1842, at $2 per week	$104 00	
Int. on same from Dec. 18, 1842, to Jan'y 1, 1851	50 16	
		$154 16
To one do. from Dec. 18, 1842, to Dec. 18, 1843	104 00	
Int. on same from Dec. 18th, 1843, to Jan'y 1, 1851.	43 92	
		147 92
To one do. from Dec. 18, 1843, to Dec. 18, 1844	104 00	
Int from Dec. 18, 1844, to Jan'y 1, 1851	37 68	
		141 68
23 To one do. from Dec. 18, 1844, to Dec. 18th, 1845	104 00	
" Int. from " " 1845, to January 1st, 1851	31 44	
		135 44
" do. from Dec. 18th, 1845, to December, 18th, 1846	104 00	
Int. from Dec. 18th, 1846, to Jan'y 1st, 1851	25 20	
		129 20
" one do. from Dec. 18, 1846, to Dec. 18, 1847	104 00	
Int. from Dec. 18, 1847, to Jan'y 1st, 1851	18 96	
		122 96
" one do. from Dec. 18, 1847, to Dec. 18, 1848	104 00	
Int. from Dec. 18th, 1848, to Jan'y 1st, 1851	12 72	
		116 72

" one year board for Yau Yau Arp from Dec. 14, 1841, to December 18, 1842	104 00	
Int. on same from Dec. 18, 1842, to Jan'y 1, 1851	50 16	
		154 16
" one do. from Dec. 18th, 1842, to Dec. 18, 1843	104 00	
Int. from Dec. 18, 1843, to January 1, 1851	43 92	
		147 92
" one do. from Dec. 18, 1843, to Dec. 18, 1844	104 00	
Int. from Dec. 18, 1844, to Jan'y 1, 1851	37 68	
		141 68
" one do. from Dec. 18, 1844, to Dec. 18, 1845	104 00	
Int. from Dec. 18, 1845, to Jan'y 1st, 1851	31 44	
		135 44
" one do. from Dec. 18, 1845, to Dec. 18, 1846	104 00	
Int. from Dec. 18, 1846, to Ja'ny 1st, 1851	25 20	
		129 20
" one do. from Dec. 18, 1846, to Dec. 18, 1847	104 00	
Int. from Dec. 18, 1847, to Jan'y 1, 1851	18 96	
		122 96
" one do. from Dec. 18, 1847, to Dec. 18, 1848	104 00	
Int. from Dec. 18, 1848, to Jan'y 1, 1851	12 72	
		116 72
24 To one do. from Dec. 18, 1848, to Dec. 18, 1849	$104 00	
Int. from Dec. 18, 1849, to Jan'y 1st, 1851	6 48	
		110 48
" one do. from Dec. 18, 1849, to Dec. 18, 1850	104 00	
Int. from Dec. 18, 1850, to Jan'y 1st. 1851	24	
		104 24
" do. do. from 18th Dec., 1850, to Jan'y 1, 1851	4 00	
		4 00
		$2,114 88

True copy. Test.

OWEN NORFOLK,
Clerk of Circuit Court of Prince George's County.

Decree.

Circuit court for Prince George's County, sitting as a court of equity, Nov. term, 1852.

OVERTON C. WARNER
v.
SUSAN BOTELER, ADM'X OF WILLIAM BOTELER, Elizabeth S. Boteler, & others.

This cause, standing ready for hearing, and being submitted without argument, the proceedings were read and considered.

It is, thereupon, this 25th day of January, in the year of our Lord one thousand eight hundred and fifty-three, by the circuit court of Prince George's County, sitting as a court of equity, and by the authority thereof, adjudged, ordered, and decreed that the real estate of
25 William Boteler, deceased, in the proceedings mentioned, or so

much thereof as may be necessary for the payment of his debts, be sold; that Daniel C. Digges be, and he is hereby, appointed trustee to make such sale; and that the course and manner of his proceedings shall be as follows: He shall first file in the office of the clerk of this court a bond to the State of Maryland, executed by himself, with a surety or sureties, to be approved by this court or the clerk thereof, in the penalty of fifteen thousand dollars, conditioned for the faithful performance of the trust reposed in him by this decree, or which may be reposed in him by any future order or decree in the premises. He shall then proceed to make sale of the said real estate, having first given at least three weeks' previous notice, inserted in some newspaper published in Prince George's County, and such other notice as he may think proper, of the time, place, manner, and terms of sale, which terms shall be as follows: two thousand dollars of the purchase-money to be
26 paid on the day of sale, and the balance thereof to be paid in equal instalments in one, two, three, and four years from the day of sale, the said balance to bear an interest from the day of sale, and the payment thereof to be secured by the bonds of the purchaser, with a surety, or sureties, to be approved by the trustee. And as soon as may be convenient, after any such sale or sales, the trustee shall return to this court a full and particular account of the same, with an affidavit of the truth thereof, and of the fairness of such sale or sales annexed. And on the ratification of such sale or sales by this court, and on the payment of the whole purchase-money, and not before, the said trustee, by a good and sufficient deed, to be executed and acknowledged agreeably to law, shall convey to the purchaser or purchasers of said property, to him, her, or them sold, free, clear, and discharged of all claim of the parties to this cause, and of any person or persons claiming by, from, or under them. And the trustee shall bring into this court the money arising on such sale or sales, and the bonds
27 or notes which may be taken for the same, to be disposed of under the direction of this court, after deducting therefrom the costs of this suit, and such commission to the said trustee as this court shall think proper to allow, on consideration of the skill, attention, and fidelity wherewith he shall appear to have discharged his trust; and at the time of advertising said sale the trustee is directed to give notice to the creditors of the said William Boteler, deceased, to file their claims, with the vouchers thereof, in the office of the clerk of this court, within four months from the day of sale.

PETER W. CRAIN.

Bond approved and filed 14*th April*, 1853.

Know all men by these presents that we, Daniel C. Digges, Norah Digges, and Charles Digges, all of Prince George's County, in the State of Maryland, are held and firmly bound unto the State of Maryland in the full and just sum of fifteen thousand dollars, current money,
28 to be paid to the said State of Maryland or its certain attorney; to which payment well and truly to be made and done, we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents; sealed with our seals, and dated this twelfth day of February, in the year one thousand eight hundred and fifty-three.

Whereas by a decree of the circuit court for Prince George's County, in the State of Maryland, sitting as a court of equity, bearing date on the twenty-fifth day of January, in the year one thousand eight hun-

dred and fifty-three, and passed in a cause wherein Overton C. Warner is complainant, and Susan Boteler administratrix, of William Boteler, deceased, and others are defendants, the above-bound Daniel C. Digges has been appointed trustee to make sale of certain real estate in the proceedings in said cause mentioned: Now, the condition of the above obligation is such, that if the above-bounden Daniel C. Digges do
29 and shall well and faithfully perform the trust reposed in him by said decree, or that may be reposed in him by any future decree or order in the premises, then this obligation to be void; otherwise to remain in full force and virtue in law.

DANIEL C. DIGGES. [SEAL.]
NORAH DIGGES. [SEAL.]
CHARLES DIGGES. [SEAL.]

Signed, sealed, and delivered in the presence of—
NORAH T. DIGGES.

April 5th, 1853. Security approved.

PETER W. CRAIN.

Trustees' report.

In circuit court for Prince George's County, sitting in equity, April term, 1853.

OVERTON C. WARNER
vs.
SUSAN BOTELER, ADM'X OF WILLIAM BOTELER, Elizabeth S. Boteler, William A. Boteler, Overton C. Boteler, and James S. Boteler, children & heirs-at-law of said William Boteler. } No. 5, new equity-docket. Trustees' report.

30 To the Honorable Peter W. Crain, judge of the circuit court for Prince George's County, sitting as a court of equity:

The report of Daniel C. Digges, trustee, appointed by the decree in this cause to make sale of certain real estate therein mentioned, shows that, after giving bond, with securities, for the faithful discharge of his trust, as required by said decree, and which said bond has been approved, and after giving notice of the time, place, manner, and terms of sale, by advertisement in the Marlboro Gazette, a newspaper printed in said county, and in the National Intellegencer, a newspaper printed in Washington City, for more than three weeks before the day of sale, and by handbills extensively circulated throughout the said county, he did, pursuant to said notice, attend at the court-house door, on Wednesday, the sixth day of April, 1853, at the hour of four o'clock p. m., and then and there proceed to sell the said real estate as follows: In the first
31 place, your trustee offered at public sale to the highest bidder all the real estate of the deceased William Boteler, supposed to contain two hundred and fifty acres, more or less, which adjoins the land of George W. Graham and Charles Hill, esq'ires, and of Dr. Benedict I. Gardiner, and then and there sold the same to Judson Scott, he being then and there the highest bidder therefor, at and for the sum of forty dollars and five cents per acre. Your trustee considered it highly promotive of the interest of all the parties in interest in this case to vary the terms of sale so as not to require the cash instalment to be paid be-

fore the day of the ratification of the said sale; and, in conformity with said change of terms, the said purchaser executed the annexed memorandum of sale, by which he agreed to pay to your trustee the cash instalment of two thousand dollars on the ratification of the sale, and to give his bonds, with approved co-obligors, for the deferred payments, with interest from the said day of sale; the real estate to be sur-
32 veyed, and the purchaser to bond according to the number of acres thus ascertained. In the next place, your trustee offered for sale the wood-lot near Centreville, belonging to said deceased William Boteler, supposed to contain five acres, more or less, and sold the same to John F. Jones, at and for the price of seventy-two dollars and fifty cents per acre, and in conformity with an advantageous change of terms for all the parties, so as to require no cash instalment for the five-acre lot, but that the purchaser should give his bonds for the amount of his said purchase, with good security, as to equal sums, payable, with interest, from the day of sale in one, two, and three years therefrom. The said John F. Jones executed the annexed memorandum of sale and agreement on his part to comply with the same upon the ratification of the said sale by your honor.

And your trustee further reports that, at the time of advertising said sales, he gave notice to the creditors of the said William Boteler,
33 deceased, to file their claims, with the vouchers thereto, in this court within four months from the day of sale.

Which is respectfully submitted.

DANIEL C. DIGGES, *Trustee.*

On this thirteenth day of April, 1853, before the subscriber, a justice of the peace in and for said county, personally appeared the within-named Daniel C. Digges, trustee, and made oath that the matters and things stated in the foregoing report are true, to the best of his knowledge and belief, and that the sales therein reported were fairly made.

Sworn before—

JOHN R. WALKER, *J. P.*

Order nisi.

In circuit court for Prince George's County, sitting as a court of equity.

OVERTON C. WARNER
vs.
SUSAN BOTELER & OTHERS.

34 Ordered that the sales made and reported by Daniel C. Digges, trustee for the sale of the real estate of William Boteler, deceased, be ratified and confirmed, unless cause to the contrary thereof be shown on or before the second Monday of July next: *Provided*, a copy of this order be inserted in some paper printed in Prince George's County, once in each of three successive weeks before the last day of May next.

The report states that the farm near Upper Marlboro, sold for $40.05 per acre, and the wood land near Centreville, sold for the sum of seventy-two dollars & fifty cents.

PETER W. CRAIN.

13 APRIL, 1853.

Final order of ratification.

Circuit court for P. George's County, sitting as a court of equity.

OVERTON C. WARNER
v.
SUSAN BOTELER & OTHERS. } No. 5. Equity.

35 Ordered by the circuit court for Prince George's County, sitting as a court of equity, that the sales heretofore made and reported by Daniel C. Digges, trustee in this cause, be, and the same are hereby, ratified and confirmed, no cause having been shown to the contrary, although due notice appears by the certificate of the editor of the Gazette, to have been given, as was required by the previous order of this court.

PETER W. CRAIN.

NOV. 17TH, 1853.

Order referring case to auditor.

In circuit court for Prince George's County, sitting as a court of equity.

OVERTON C. WARNER
v.
SUSAN BOTELER & OTHERS. } June term, 1854.

Ordered by the circuit court for Prince George's County, sitting as a court of equity, this 19th day of June, in the year of our Lord one thousand eight hundred and fifty-four, that the proceedings in this cause be, and the same are hereby, refer'ed to the auditor to state the
36 usual account, distributing the trust among the creditors and parties thereto entitled, after deducting therefrom all the costs and expenses of this suit, and the usual commission to the trustee, according to the scale of allowance established by this court, &c.

PETER W. CRAIN.

Auditor's report.

In the circuit court for Prince George's County, sitting in equity.

OVERTON C. WARNER
v.
SUSAN BOTELER & OTHERS. }

To the Honorable Peter W. Crain, judge of the circuit court for Prince George's County, sitting in equity:

The auditor reports to the court that he has examined the proceedings herein, and therefore states accounts E, F, & G, herewith filed. In Account E, the auditor has allowed Susan Boteler, widow of William Boteler, deceased, interest on her share of proceeds of real estate in lieu of dower, from 6th day of April, 1853, the day of sale, up to the
37 time when she received a payment, and interest thereon on the balance till she received another payment, taking care not to allow compound interest, and regularly on in that manner up to the first day of August, 1859, when, as appears by Account E, she was entitled to receive, as interest on her share, $277.78.

In Account F, the trustee is charged with $25, being that much of claim No. 30, per Account C, which was refunded, with the whole of claim No. 38, and whole of claim No. 40, repeated in Account C, by the court, and with $1,400.40, being amount of principal appearing, per Account C, for distribution, and brought to this account (F,) and with $1,376.19, being amount of interest reported by the trustee, as having accrued on the purchase-money; and, after deducting therefrom additional clerk's costs, trustee's commission, $\frac{1}{10}$ for State tax on same, amount due Susan Boteler, for interest, on her share in lieu of dower, and auditor's fees, the balance has been distributed among the
38 children of William Boteler, deceased, who survived him. Account G is between Susan Boteler, as administratrix of William Boteler, and his personal estate. In this account, she is charged with the amount of a judgment, with interest and costs, 1st August, 1859, as having been received on that day; and, after allowing her credits for commission due her as administratrix, State tax on same, commission to D. C. Digges for collecting same, and the amount of a claim of Edward J. K. Scott, for money paid as surety for William Boteler, deceased, per account proved, passed, and filed, there is a balance of $222.34.

Respectively submitted.

S. B. HANCE, *Auditor.*

ACCOUNT F.

DR. *The real estate of William Boteler, deceased, in account with Daniel .C Digges, trustee.* CR.

1859.			1859.		
Aug't 1st	To additional clerk's costs	3 25	Aug. 1	By this, being amount of principal taken per agreement and order of court from claim No. 30, in Account C.	25 00
	To trustee's commissions on amount of interest reported, less 1-10 for State tax on same.	37 16	"	By this sum, being amount of claim No. 38, taken per agreement and order of court, from Account C.	339 42
	To State tax on trustee's commissions	4 12	"	By this sum, being amount of claim No. 40, taken, per agreement and order of court, from Account C.	26 87
	To Susan Boteler, for interest on amount assigned her in lieu of dower per Account E.	271 78	"	By this sum, being amount of principal appearing, by Account C. for distribution and brought to this account.	1,400 40
	To auditor's fee	28 00	"	By this amount of interest reported by D. C. Digges, trustee, as having accrued on the purchase-money.	1,376 19
	To balance	2,817 57			
		$3,167 88			$3,167 88
	To Elizabeth S. Boteler, ¼	704 39¼		By balance	$2,817 57
	To William A. Boteler, ¼	704 39¼			
	To Overton C. Boteler, ¼	704 39¼			
	To James S. Boteler, ¼	704 39¼			
		$2,817 57			

41 *Order of court finally ratifying auditor's report, accounts, &c.*

In the circuit court for Prince George's County, sitting in equity.

OVERTON C. WARNER
vs.
SUSAN BOTELER, ADM'R'X OF WILLIAM BOTELER, and others.

Ordered, this 11th day of April, eighteen hundred and sixty, that the auditor's report and Accounts E and F, filed in the above cause, on the 5th of November, 1859, (the same having remained in this court one entire term without being excepted to,) be absolutely ratified and confirmed, and the trustee in the above cause is hereby directed to pay over the trust-fund to the several parties as and distributed in Account F; and it is further ordered and decreed that Account G, filed in the above cause, on the 5th of November, eighteen hundred and fifty-nine, (the same having remained in court one entire term without being excepted to,) be finally ratified and confirmed, and Susan Boteler, as administratrix of William Boteler, deceased, is hereby directed to state the personal estate as stated in said Account G.

PETER W. CRAIN.

42 STATE OF MARYLAND,
Prince George's County, set:

I hereby certify that the aforegoing are truly taken and copied from the proceedings of the circuit court for Prince George's County, sitting as a court of equity, filed in a cause therein in which Overton C. Warner is complainant, and Susan Boteler, administratrix of William Boteler and others, are respondants, numbered 5 on the docket thereof.

In testimony whereof I hereunto subscribe my name and affix the seal of the circuit court for Prince George's County, Maryland, this twenty-fourth day of December, anno Domin, 1870.

[SEAL OF COURT.] HENRY BROOKE,
Clerk of the Circuit Court for Prince Georges Co., Md.

Auditor's report.

To the Honorable Peter W. Crain, judge of the circuit court for
43 Prince George's County, sitting in equity:

The auditor reports to the court that he has examined the proceedings in this case, and therefrom states the accompan'ing accounts, marked Accounts A and B, and made a statement of claims with interest calculated to 1st of November, 1856. In Account A, after charging the funds in the hands of the trustee with the costs of suit, trustee's commission, State tax on same, taxes, and all expenses attending survey of land, advertising, &c., the widow, (Susan Boteler,) has been assigned $\frac{1}{3}$ of the nett balance, in lieu of her dower, she being, at the time of the death of her husband, under forty years of age. The balance then appearing due by Account A has been carried to Account B, in which the sum of seventy-six dollars and sixty-six cents ($76.66) has been allowed said Susan Boteler, administratrix of said deceased, for amount over-paid his personal estate, and the said balance brought from Account A to Account B, has also been charged with the amount due creditors, as per statement of claims herewith filed, leaving

44 a balance in the hands of the trustee, after paying said creditors as per statement of claims, of $2,755.46. The statement of claims does not embrace all the claims against the estate of William Boteler, and as there are various suits against the administratrix of William Boteler, deceased, which have arissen against the estate on account of the said deceased being a surety on several constable bonds of Overton C. Warner, and as there are executions outstanding in many cases against the surviving obligors, the auditor has thought it best to exclude them altogether in the present audit, it not appearing to the auditor what amounts should be allowed against the estate, but that upon proper proof hereafter adduced, all such claims can be allowed in a subsequent audit.

Respectfully submitted,

JOHN CONTER MULLIKIN,
Auditor.

STATE OF MARYLAND,
Prince George's County, sct:

I hereby certify that the aforegoing is truly taken and copied
45 from the original now on file in No. 5, equity, in the circuit court of Prince George's County.

In testimony whereof I hereunto subscribe my name and affix the seal of the circuit court for Prince George's County, this 9th day of March, A. D. 1870.

[SEAL OF COURT.]

HENRY BROOKE,
Clerk of C. C. for Pr. Geo's Co., Md.

ACCOUNT A.

DR. *The real estate of William Boteler, deceased, in account with Daniel C. Digges, trustee.* CR.

1853.				1853.		
April 6.	To cost of suit, as follows:			April 6.	By proceeds of sale of wood land near Centerville	$362 50
	To clerk	43 80		" "	By proceeds of 205 acres of land near Upper Marlborough, at $40.05 per acre, per trustee's report.	8,210 25
	To commissions, for taking evidence and assigning guardian	16 00				$8,572 75
	To attorney	10 00				
	To sheriff	1 91				
	To defendant's costs, as follows:					
	To clerk	60				
	To attorney	10 00				
			82 31			
	To trustee's commissions, less 1-10 for State tax	258 47				
	To State tax on same	28 71				
	To solicitor, for filing bill & obt'g decree	30 00				
	To taxes paid in 1853, per receipt	42 37				
	To ditto " " 1854, " "	30 26				
	To " " " 1855, " "	33 90				
	To Thomas J. Wilson, for advertising	31 33				
	To Gales and Seaton, for do	20 00				
	To Nicholas Snowden, for survey'g land	25 00				
	To chain and pole carriers	8 00				
	To expenses of persons on survey	6 75				
	To auctione're	25 00				
	To auditor's fees	32 66				
			572 45			
			654 76			
	To balance		7,917 99			
	Balance brought down	7,917 99	8,572 75			$8,572 75
	To Susan Boteler, widow of deceased, in lieu of her dower, per chancery scale, 1-7.	1,131 14				
	Balance carried to Account B	6,786 85				

STATE OF MARYLAND, *Prince George's County, sct:*

I hereby certify that the within is a true copy from the original account now on file in No. 5, equity, in the circuit court for Prince George's County.

In testimony whereof I hereunto subscribe my name and affix the seal of the circuit court for Prince George's County, this 9th day of March, A. D. 1870.

[SEAL OF COURT.]

HENRY BROOKE,
Clerk of C. C. for Prince Geo's Co., Md.

REC. 503—2

48 ACCOUNT B.

To this amount to Susan Boteler, administratrix of William Boteler, deceased, for over payment of personal estate of said deceased, as per account passed in the orphan's court, on the 21st October, 1856...	76 66	By this amount brought from Account A, after paying costs of suit in equity, and assigning to the widow 1-7 of the nett proceeds	6, 786 85
To the creditors of William Boteler, deceased, as per statement of claim, marked No. 1.....	3, 954 73		
By balance.....	2, 755 46		
	$6, 786 85		$6, 786 85

STATE OF MARYLAND, *Prince George's County, sct:*

I hereby certify that the aforegoing is truly taken and copied from the original now on file in No. 5, equity, in the circuit court for Prince George's County.

In testimony whereof I have hereunto subscribed my name and affixed the seal of the circuit court for Prince George's County, this 9th day of March, A. D. 1870.

[SEAL OF COURT.]

HENRY BROOK,
Clerk of C. C. for P'r Geo's Co., M'd.

ACCOUNT C.

DR. *The real estate of William Boteler, deceased, in account with Daniel C. Digges, trustee.* DR.

	To clerk's costs since last audit	4 45		By this amount bro't from Account B	$2,755 46
	" taxes paid for 1856	16 99			
	" taxes paid for 1857	17 41		By balance	2,679 28
	" Auditor's fees	37 33			
			76 18		
	To balance		$2,679 28		
			$2,755 46		
21	To State, use of Benjamin Henry for costs against Susan Boteler, administratrix of William Boteler.	9 58			
22	To State, use of Walter W. Berry for costs	13 58			
23	To Mary Baldwin & Daniel C. Digges, adm'r d. b. n. Eli S. Baldwin, for costs against same as above.	15 03			
24	To State, use of Holker & Hughes for costs against same	11 73			
25	To State, use of Thomas R. Brookes for costs against same	9 68			
26	To State, use of Middleton & Beall for costs against same	8 73			
27	To State, use of Edward I. Sanders & John U. I. Sanders for additional costs against same.	6 60			
28	To W'm H. Tuck, ex'r of Robert A. Baine, for costs against same.	6 95			
			81 58		
29	To Daniel C. Digges, for five per cent. commissions on $2,412.71 collected by suit from Judson Scott, the purchaser of the real estate.	120 63			
			120 63		
30	To Daniel C. Digges for professional services for compromising and settling matters in dispute between O. C. Harris and William Boteler's, administratrix.		150 00	It is hereby agreed that claim No. 30, being the claim of Daniel C. Digges, shall be, and the same is hereby, allowed to the extent of one hundred and twenty-five dollars.	
			$352 21	D. C. DIGGES.	
				SAM'L H. BERRY.	$2,679 28
	52, 53				
	Amount brought over		352 21	**Amount brought forward**	$2,679 28
31	To Daniel C. Digges, for amount paid in case of J. Millikins, ex'r, against William Boteler, O. C. Warner, & T. Suit, per account.	79 80			
	Interest from 24 Nov., 1856, to 1st April, 1858	6 48			
			86 28		
32	To Daniel C. Digges, for amount paid for William Boteler's estate, on judgment of State, use of Middleton & Beall, against Boteler's bond, as constable, per account.	47 87			
	Interest from 10 Nov., 1847, to 1st of April, 1858	1 10			
			48 97		
33	To Daniel C. Digges, for costs paid Dr. John H. Boyle, per order of adm'x, Susan Boteler, for medical services to family.		90 00		
34	To Daniel C. Digges, for costs paid Dr. John H. Boyle, per order		40 00		

Account C—Continued.

	of adm'x, Susan Boteler, for medical services to family.					
35	To Fielder, suit for amount paid on judgment of State, use of J. Mullikins, executor, vs. F. Suit and O. C. Warner, survivors of William Boteler; and as securities for said Boteler.	79 80				
	Interest from 24th Nov., 1856, to 1st April, 1858	6 48				
			86 28			
36	To Fielder, suit for amount paid for William Boteler, on judgment of State, use of Middleton & Beall, against Butler & sureties.	47 87				
	Interest from 10th Nov., 1857, to 1st April, 1858	1 10				
			48 97			
37	To Margaret Woolton, administratri' of W'm T Woolton's bill	75 00				
	Interest from 1st May, 1852, to 1st April, 1858	26 62				
	To costs to justice of peace, for taking proof	4 00				
			105 62			
			858 33			$2,679 28
54						
	Amount brought over		858 33	Amount brought forward		$2,679 28
38	To Susan Boteler, administratrix of William Boteler, as-igne' of Edward J. K. Scott, per account.	306 35				
	Interest on $137.26, from 19th Feb'y, 1856, to 1st April, 1858	17 43				
	Interest on $169.09, from 15 Sep., 1856, to 1s' April, 1858	15 64				
			339 42			
39	To C. C. Magruder and Clement Janey, adm'r d. b. n., of Notley Young, for note of J. M. Cabo, F. M. Soper, and J. Millikin, jr., placed in William Boteler's hands, as constable, per receipt of said Boteler.	34 00				
	Interest from 25th April, 1848, to 1st April, 1858	20 26				
			54 26			
40	To Dr. Osbourn and Scott, per account	25 00				
	Interest from 1st January, 1857, to 1st of April, 1858	1 87				
			26 87			
			1,278 88			
	To balance		1,400 00	By balance for distribution		1,400 40
			$2,679 28			
	To Elizabeth S. Boteler, ⅓ of balance	$466 80				
	To Overton C. Boteler, ⅓ of ditto	466 80				
	To James S. Boteler, ⅓ of ditto	466 80				
			1,400 40			$1,400 00

55

Ordered and adjudged by Peter W. Crain, judge of the circuit court for Prince George's County, as a court of equity, that the within account of the auditor be, and the same is hereby, in all respects ratified and confirmed, (except as to claims Nos. 38 and 40,) which two claims are reserved for the future action of the court; and the trustee is directed to apply the trust-fund accordingly, with a due proportion of interest, as the same has been or may be received; and claim No. 30 is allowed, by agreement of counsel, to the extent of one hundred and twenty-five dollars.

PETER W. CRAIN.

FEB'Y 12TH, 1859.

STATE OF MARYLAND,
Prince George's County, set:

I hereby certify that the within is truly taken and copied from the original now on filed in No. 5, equity, in the circuit couet for Prince George's County.

In testimony whereof I hereunto subscribed my name and affix the seal of the circuit court for Prince George's County, this 9th day of March, A. D. 1870.

[SEAL OF COURT.]

HENRY BROOKE,
Clerk of C. C. for Prince George's Co., Md.

56 ACCOUNT E.

Susan Boteler, widow of William Boteler, deceased, for share of real estate in lieu of dower therein, per Account A....	$1,131 14
Interest from 6th April, 1853, to 11th August, 1853.....	23 56
	1,154 70
Then paid by trustee, per receipt.....	100 00
	1,054 70
Interest from 11th August, 1853, to 30th November, 1853...	19 16
	1,073 86
Then paid by trustee, per receipts	150 00
	923 86
Interest from 30th November, 1853, to 11th April, 1854.....	20 17
	944 03
Then paid by trustee, per receipt.....	100 00
	844 03
Interest from 11th April, 1854, to August 22nd, 1854.....	18 42
	862 45
Then paid by trustee, per receipt.....	50 00
	812 45
Interest from 22d August, 1854, to 5th Dec'r, 1854.....	13 94
	826 39

Then paid by trustee, per received	50 00	
		776 39
Interest from 5th December, 1854, to 15th June, 1855	24 58	
		800 97
Then paid by trustee, per receipt	50 00	
		750 97
Interest from 15th June, 1855, to 28th January, 1856	27 91	
		778 88
Then paid by trustee, per receipt	30 00	
		748 88
Interest from 28th January, 1856, to 29th March, 1856	8 73	
Carried over		757 61
57 Amount brought forward		757 61
Then paid by trustee, per receipt	10 00	
		747 61
Interest from 29th March, 1856, to 9th July, 1856	12 46	
		760 07
Then paid by trustee, per receipt	40 00	
		720 07
Interest from 9th July, 1856, to 29th September, 1856	9 60	
		729 67
Then paid by trustee, per receipt	7 93	
		721 74
Interest from 29th Sept., 1856, to 16th Oct., 1856, on $720.07	2 04	
		723 78
Then paid by trustee, per receipt	50 00	
		673 78
Interest from 16th October, 1856, to 5th January, 1857	8 98	
		682 76
Then paid by trustee, per receipt	50 00	
		632 76
Interest from 5th January, 1857, to 27th June, 1857	18 13	
		650 89
Then paid by trustee, per receipt	50 00	
		600 89
Interest from 27th June, 1857, to 5th Dec., 1857	15 82	
		616 71

Then paid by trustee, per receipt		5 00
		611 71
Interest from 5th Dec'r, 1857, to 28th Ap'l, 1858, on $600.89		14 31
		626 02
Then paid by trustee, per receipt		20 40
		605 62
Interest on $600.89 from 28th Ap'l, 1858, to 22d June, 1858		5 50
Amount carried up		611 12
58 Amount brought forward		611 12
Then paid by trustee, per receipt		80 00
		531 12
Int'rest from 22d June, 1858, to 23d August, 1858		5 39
		536 51
Then paid by trustee, per receipt		10 00
		526 51
Interest from 23d August, 1858, to 18th March, 1859		17 80
		544 31
Then paid by trustee, per receipts		35 00
		509 31
Int'rest from 18th March, 1859, to 1st August, 1859		11 28
		520 59
Add amounts of credits given by this statement		888 33
		1,408 92
Deduct widow's share allowed per Account A		1,131 14
And you have amount of interest due widow		$277 78

STATE OF MARYLAND,
Prince George's County, sct:

I hereby certify that the aforegoing is truly taken and copied from the original, now on file in No. 5, equity, in the circuit court for Prince George's County.

In testimony whereof I hereunto subscribe my name and affix the seal of the circuit court for Prince George's County, this 9th day of March, A. D. 1870.

HENRY BROOKE,
Clerk of C. C. for Prince George's Co., Md.

59, 60 ACCOUNT G.

Susan Boteler, administratrix of William Boteler, deceased, in account with his personal estate.

DR.				CR.
1859. Aug't 1st	To this sum, being amount of judgment, interest, and costs recovered in the name of State of William Boteler's administratrix, against Edward J. K. Scott, survivor of Polydon E. and Edward Scott, with interest to date of this account	689 71	By 10 per cent. commission to administratrix, less 1-10 for State tax on same	62 08
			By State tax on same	6 89
			By 5 per cent. commission to D. C. Digges for collecting amount charged in this account against administratrix	34 48
			By the sum due to Edward J. K. Scott, on account, (with interest to date of this account,) for monies paid as surety for William Boteler, deceased, per account proved, passed, and filed	363 92
			By balance 222	222 34
		$689 71		689 71
	To balance, per contra, brought down	$222 34		

STATE OF MARYLAND, *Prince George's County, sct:*

I hereby certify that the aforegoing is truly taken and copied from the original now on file in No. 5, equity, in the circuit court for Prince George's County.

In testimony whereof I hereunto subscribed my name and affix the seal of the circuit court for Prince George's County, this 9th day of March, A. D. 1870.

[SEAL OF COURT.]

HENRY BROOKE,
Clerk of C. C. for Prince George's Co., Md.

61, 62 ACCOUNT A. No. 340. EQUITY.

The personal estate of Daniel C. Digges, deceased, in account with Elizabeth C. Digges & Rich'd B. Chew, his adm's.

DR.					CR.
To William H. Tuck for proportion of proceeds of negro Jane, as per statement of claim No. 63, and as per papers on file in No. 482, trials to April term, 1863, it will appear he is entitled	550 00		1865 Sept. 19th	By this amount remaining in the hands of Elizabeth C. Digges and Richard B. B. Chew, administrators, C. T. A. of Daniel C. Digges, dec'd, on passage of first additional account in the orphan's court of Prince Georges County	$14, 472 89
To Margaret W. Bowie, administratrix of Richard W. Bowie, for this amount of proceeds of negro Jane, as per papers on file in No. 482, trials to April term, 1863, it will appear she is entitled	250 00				
To auditors' fees	200 00				
		1, 000 00			
To balance		13, 472 89		By balance	$14, 472 89
		14, 472 89			

STATE OF MARYLAND,
Prince George's County, sct:

I hereby certify that the aforegoing is truly taken and copied from the original now on file in No. 340, equity, in the circuit court for Prince George's County.

In testimony whereof I hereunto subscribe my name and affix the seal of the circuit court for Prince George's County, this 9th day of March, A. D. 1870.

HENRY BROOKE,
Clerk of C. C. for Prince George's Co., Md.

ACCOUNT C.—No. 340 EQUITY.

DR. *The real estate of Daniel C. Digges, deceased, in account with Elizabeth C. Digges & Richard B. B. Chew, his administrators.* CR.

Claims.							
No. 126	To State, use of Henry Warren Summers, as per statement of claims.	4,471 39			By amount from Account A		$13,472 89
	To balance	9,001 50					
		13,472 89					$13,472 89
No. 1	To Neilson Poe and William R. Howard, as per statement of claims.	88 18	17 22		By balance		$9,001 50
2	" Jane E. Tolson, executrix of W'm Tolson, as per ditto.	378 80	74 00				
3	" Benjamin L. Jackson, W'm B. Jackson & George I. Scuffals, trading as Jackson Brother & Co., as per statement of claims.	559 67	109 34				
4	To Benjamin L. Jackson, as per ditto	236 46	46 19				
5	" Samuel B. Hance, as per ditto	130 87	25 56				
6	" Margaret W. Bowie, administratrix of Richard W. Bowie, as per ditto.	670 95	131 08				
7	To Nathaniel M McGregor, Thomas L Potter, & Henry F. Zimmerman, trading under firm of N. M. McGregor & Co., as per ditto.	722 76	141 20				
8	To Samuel H. Barry, as per ditto	195 04	38 10				
9	To the justices of the orphans' court of Prince George's County, as per ditto.	238 65	46 62				
10	To the justices of the orphans' court, per ditto	666 16	130 14				
	Amount carried forward	$3,887 54	759 45		Amount carried forward		$9,001 50

DR. *The personal estate of Daniel C. Digges, deceased, in account with Elizabeth C. Digges, & Richard B. B. Chew, his adm'x.* CR.

	To amount brought forward	$3,887 54	759 45	By amount brought forward		$9,001 50
11	To Joseph Hildeburn, surviving partner of James Watson & Hildeburn, as per statement of claim.	142 35	27 81			
12	To Charles S. Middleton, as per ditto	895 96	175 03			
13	To Jacob Tome, as per ditto	787 43	153 83			
14	To State, use of Susan Boteler, as per ditto	298 83	58 38			
15	To State, use of Samuel H. Berry, adm'r of William A. Boteler, as per ditto.	924 65	180 64			
16	To State, use of Samuel H. Berry, guardian of Elizabeth S. Boteler, as per ditto.	924 65	180 64			
17	To State, use of Samuel H. Berry, guardian of Overton Boteler, as per ditto.	924 65	180 64			
18	To State, use of Samuel H. Berry, guardian of James S. Boteler, as per dttto.	924 65	180 64			
19	To George W. Wilson, adm'r of Reuben W. Brownell, as per ditto.	169 55	33 12			
20	To John Thomas Soper, as per ditto	82 08	16 03			
21	To Benjamin L. Jackson, William B. Jackson, & George I. Seufferle, trading as Jackson, Brother & Co.	435 60	85 10			
22	To Edward M. Linthicum, Charles A. Buckley, & John Marbury, trading as firm of E. M. Linthicum & Co., as per ditto.	201 55	39 37			
23	To William H. Morrison, & Obediah H. Morrison, as per ditto.	195 98	38 28			
24	To Charles Ridgely, jr., as per ditto	605 80	118 35			
67, 68		$11,401 27	2,227 31	Amount carried forward		$9,001 50
	To amount brought forward	$11,401 27	2,227 31	By amount brought forward		$9,001 50
25	To George W. Hunter as per ditto	191 07	37 32			
26	To Albert & Charles E. Stewart, as per ditto	199 02	38 88			
27	To James E. Morgan, as per ditto	238 67	46 62			
28	To Nicholas C. Stephen, as per ditto	374 32	73 12			
29	To Charles H. Lane, as per ditto	107 39	20 98			
30	To Jeremiah Townshend & Mordecai F. S. Boswell, as per ditto.	55 15	10 77			
31	To Samuel H. Berry & John E. Berry, adm's of Albert B. Berry, as per ditto.	525 80	102 72			
32	To Samuel H. Berry, as per ditto	69 49	13 57			
33	To State, use of Daniel Clark, adm'r of John F. Jones, as per ditto.	215 46	42 09			
34	To James B. Belt & Thomas E. Williams, trading under firm of Belt & Williams, as per ditto.	91 51	17 87			
35	To James B. Belt, Thomas E. Williams & Augustus Hilleary, as per ditto.	217 49	42 48			

36	To James B. Belt, as per ditto	236 93	46 28
37	To James Casparis, as per ditto	219 34	42 85
38	To Edward Owen & Samuel Owen, as per ditto	303 05	59 20
39	To Evan Lyons, as per ditto	954 48	186 47
40	To Samuel H. Berry & C. C. Magruder, receivers of Hall & Anderson, as per ditto.	1,305 32	255 01
42	To Charles Clagett, as per ditto	430 08	84 02
43	To State, use of Louis Mackall, use of William H. Tuck, as per ditto.	839 20	163 95
44	To Amelia H. Chew, as per ditto	130 01	25 39
	Amount carried forward	$18,105 05	3,536 90
69, 70			
	To amount brought forward	18,105 05	3,536 90
45	To State, use of Samuel B. Hance, adm'r D B. N. of Rozier T. Dangerfield, as per statement of claims.	2,043 42	399 21
46	To William H. Allen, as per ditto	810 28	158 30
47	To Benedict Edelen & Joana Edelen, adm'rs of Francis Posey, as per ditto.	265 92	51 95
48	To James Harper, as per ditto	233 09	45 53
49	To the president, directors & company of the Bank of Baltimore, as per ditto.	134 62	26 30
50	To Edward G. W. Hall, & William F. Greenwell, as do.	295 73	57 77
52	To Margaret W. Bowie, adm'x of Richard W. Bowie, as p'r ditto.	427 14	83 44
53	To Norah Digges, as per ditto	379 23	74 08
54	To Norah Digges, as per ditto	3,417 06	667 57
55	To Thomas H. Osbourn, as per ditto	53 31	10 40
56	To Thomas H. Osbourn, adm'r of John Grimes, as per ditto.	168 49	32 91
58	To George H. Miller, as per ditto	67 24	13 13
59	To John E. Gardner, as per ditto	63 36	12 37
60	To Amelia H. Chew & Richard B. B. Chew, adm'rs of Leonard H. Chew, as per ditto.	9 16	1 78
61	To Amelia H. Chew & Richard B. B. Chew, adm'rs of Leonard H. Chew, as per ditto.	27 76	5 42
62	To James H. Crandell, as per ditto	127 33	24 87
63	To William H. Peck, as per ditto	132 00	25 78
64	To James A. English & Charles A. Baldwin, as per ditto.	322 19	62 94
	Amount carried forward	$27,082 38	5,290 65
71	To amount brought forward	$27,082 38	5,290 65
65	To Samuel B Hance, as per statement of claims	295 11	57 65
66	To Samuel B. Hance, trustee of Medley & Dyer as per ditto.	155 73	30 42
67	To John H. Trabrand, as per ditto	101 11	19 75
68	To George A. Barnes & John R. Mitchell firm of Barnes & Mitchell, as per ditto.	32 36	6 32

Carried forward		$9,001 50
By amount brought forward		$9,001 50
Carried forward		$9,001 50
By amount brought forward		$9,001 50

ACCOUNT "C."—No. 340, EQUITY.

DR. *The personal estate of Daniel C. Digges, deceased, in account with Elizabeth C. Digges & Richard B. B. Chew, his administrators.* CR.

69	To Joseph Soper, as per ditto	185 73	36 28			
70	To Eleanor Soper, as per ditto	185 73	36 28			
71	To Judson C. Pumphrey & Priscilla Pumphrey, his wife, as per ditto.	139 71	27 29			
72	To Rector Pumphrey & Elizabeth Pumphrey, his wife, as per ditto.	29 78	5 81			
73	To Rector Pumphrey, assignee of James L. Soper, as per ditto.	183 93	35 93			
74	To Elijah King & Martha King, his wife, as per ditto	184 50	36 04			
75	To Benjamin Bean and Artemesia Bean, his wife, as per ditto.	183 93	35 93			
76	To Nathaniel M. Soper, as per ditto	79 76	15 58			
77	To Nathaniel M. Lowe, as per ditto	22 03	4 30			
78	To Lemuel S. Lowe, as per ditto	9 80	1 91			
79	To E. N. Leonard & Margaret Leonard, his wife, as per ditto.	23 04	4 50			
80	To Ann V. Lowe, as per ditto	23 04	4 50			
81	To Verlinda Lowe, as per ditto	23 04	4 50			
		$28, 940 88	5, 653 66			
73, 74	To amount brought forward	$28, 940 88	5, 653 66	By amount brought forward		$9, 001 50
82	To Daniel W. Lowe, as per ditto	23 04	4 50			
83	To William P. Lowe, as per ditto	23 04	4 50			
84	To Samuel T. Wall, assignee of James Talbott, as per ditto.	116 81	22 82			
85	To Charlotte Osbourn, executrix of Levi Osburn, as per ditto.	9 76	1 90			
86	To James Revell, as per ditto	13 97	2 72			
87	To George Bowling, as per ditto	20 20	3 94			
88	To Richard B. B. Chew, next friend of Daniel Carroll Digges, assignee of Benjamin H. Mulliken, as per ditto.	24 64	4 80			
89	To William Tucker, as per ditto	189 54	37 02			
90	To Gales & Seaton, as per ditto	7 20	1 40			
91	To William A. Bowie, as per ditto	6 15	1 20			
92	To Collins, Heath & Hutchinson, as per ditto	28 68	5 60			
93	To Elizabeth C. Digges, assignee of Richard S. Hill, as per ditto.	27 69	5 40			
94	To Bevans & Co., as per ditto	92 13	17 99			
95	To Benjamin F. Beers & Brother, as per ditto	106 51	20 80			
96	To Selby & Guy, as per ditto	5 88	1 14			
97	To John E. Randall, as per ditto	39 97	7 80			
98	To Joseph Beasley, as per ditto	53 32	10 41			

	To Richard W. Templeman, as per ditto	77 86	15 21			
	Amount carried forward	$29,807 27	5,822 81	Carried forward		$9,001 50
75, 76						
	To amount brought forward	$29,807 27	5,822 81	By amount brought forward		$9,001 50
100	To Benjamin Westerfield, as per ditto	20 31	3 96			
101	To M. W. Connor, as per ditto	1 93	37			
102	To William A. Jarboe, as per ditto	45 54	8 89			
103	To John H. Skinner, as per ditto	141 50	27 64			
104	To John H. Skinner, as per ditto	637 75	124 59			
105	To Alexander B. Hagner, as per ditto	40 55	7 92			
106	To Richard B. B. Chew, next friend of Robert S. Digges, as per ditto.	910 70	177 91			
107	To James H. Crandall, as per ditto	876 39	171 21			
108	To Mark Beall, as per ditto	161 55	31 52			
109	To Thomas S. Beall, as per ditto	200 12	39 09			
110	To George W. Wilson, as per ditto	832 72	162 68			
111	To D. B. Canfield & Co., as per ditto	20 64	4 30			
112	To Henry J. Ball, as per ditto	89 65	17 51			
113	To Andrew Roder, as per ditto	30 57	5 97			
114	To William Gray, as per ditto	7 78	1 51			
115	To George K. Hilleary, as per ditto	3 87	75			
116	To Gettinger & Butler, as per ditto	37 75	7 37			
117	To Robert S. Swain, as per ditto	15 78	3 08			
118	To Elizabeth J. Fowler, as per ditto	10 32	2 01			
119	To George H. Stewart, as per ditto	508 33	99 31			
120	To Emily Wall, widow of Richard L. Thompson, as per ditto.	162 62	29 77			
121	To Robert E. Thompson, as per ditto	284 60	55 60			
122	To Robert E. Thompson, as per ditto	284 60	55 60			
	Amount carried forward	$35,132 80	6,861 37	Carried forward		$9,001 50
7	To amount brought forward	$35,132 80	6,861 37	By amount brought forward		$9,001 50
123	To Alexius Marceron and Martha E. Marceron, his wife, as per statement of claims.	284 60	55 60			
124	To Smith and Maria E. Smith, his wife, as per ditto.	284 60	55 60			
125	To Margaret S. A. Cumming, as per statement of claims.	954 95	186 56			
127	To State, use of Samuel H. Berry, trustee of John L. Townshend, as per ditto.	7,738 72	1,513 56			
128	To the creditors of Thomas J. Mudd for amount due them, as per ditto.	578 04	112 92			
129	To the trustees of the Upper Marlborough Academy, as per statement of claims.	776 87	151 77			
130	To Amelia H. Chew, use of Thomas S. Ball, as per ditto.	328 21	64 12			
		$46,078 79	9,001 50			$9,001 50

78 In the circuit court for Prince George's County. In equity. July term, 1866.

Upon the agreement of the administrators of D. C. Digges, of the counsel of the complainants, and of the defendants, it is this day ordered and adjudged that the within Account C, and so much of the auditor's report as relates thereto, be, and the same is hereby, ratified and confirmed, (except as to claim No. 43,) and the adm'rs C. T. A., of Daniel C. Digges, are hereby directed to apply the assets in their hands accordingly, with a proportion of interest, as the same has been or may be received.

A. B. HAGNER,
Special Judge.

OCTOBER 11TH, 1866.

STATE OF MARYLAND,
Prince George's County, sct:

I hereby certify that the aforegoing is truly taken and copied from the original now on file in No. 340, equity, in the circuit court for Prince George's County.

In testimony whereof I hereunto subscribe my name and affix the seal of the circuit court for Prince George's County, this 9th day of March, A. D. 1870.

HENRY BROOKE,
Clerk of C. C. for Pr. Geo's Co., M'd.

79 *Proceedings in general term.*

Proceedings before the supreme court of the District of Columbia, in general term, commencing Monday September 25, 1871.

MONDAY *September* 25, 1871.

By order of the justices present, to wit, Chief Justice Cartter, and justices Olin, Wylie and McArther, the marshal proclaims the opening of the court.

SATURDAY *December* 2, 1871.

Session resumed pursuant to adjournment—present, Chief Justice Cartter, and justices Olin, Wylie, Humphreys, and McArthur.

THE STATE OF MARYLAND, FOR THE USE OF Augustus M. Warfield and Susan E., his wife, Overton C. Boteler, and James Spencer Boteler, by his next friend, Susan Boteler, pl'ff,
80 *vs.*
JOHN CARROLL BRENT, SURVIVING EXECUTOR of Norah Digges, defendant. } At law. No. 6719.

This cause having at a former day of this term been argued by counsel and submitted to the court upon the agreed statement of facts on file, upon consideration whereof, the court is of opinion that the plaintiff is entitled to recover. It is therefore, this 2nd day of December, 1871, ordered that the plaintiff have judgment against the defendant for the sum of fifteen thousand dollars. The penalty of the bond of the defendant's testatrix to be discharged upon the payment to Susan E. Warfield, or her attorney, the sum of ten hundred and eighty-three $\frac{02}{100}$ ($1,083.02) dollars; to Overton C. Boteler, or his attorney, the sum of ten hundred and eighty-three $\frac{02}{100}$ ($1,083.02) dollars; & to Susan Boteler, the next friend of James Spencer Boteler, or her attorney, the sum of

ten hundred and eighty-three $\frac{02}{100}$ ($1,083.02) dollars, and that he also pay the costs of this suit.

And thereupon defendant prays an appeal in open court to Supreme Court of the United States.

81 In the supreme court of the District of Columbia, the 11th day of December, 1871.

THE STATE OF MARYLAND, FOR THE USE OF Augustus M. Warfield and Susan E. Warfield, his wife, Overton C. Boteler, and James Spencer Boteler, by his next friend, Susan Boteler, plaintiffs,
vs.
JOHN CARROLL BRENT, SURVIVING EXECUTOR of Norah Diggs, deceased, defendant.
} At law. No. In error.

Know all men by these presents that we, John Carroll Brent and Joseph N. Young, are bound unto the above-named State of Maryland, for the use of Augustus M. Warfield, and Susan E. Warfield, his wife, Overton C. Boteler, and James Spencer Boteler, by his next friend Susan Boteler, in the sum of six thousand five hundred dollars, to be paid to the State of Maryland for the uses aforesaid; to which payment, well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents, sealed with our seals, and dated this eleventh day of December, 1871.

Whereas the above-named John Carroll Brent, executor, &c., hath prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above suit by the said Supreme Court of the District of Columbia.

Now, therefore, the condition of this obligation is, that if the above-named John Carroll Brent, executor, &c., shall prosecute his said writ of error to effect, and answer all damages and costs if he shall fail to make good his plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

JOHN CARROLL BRENT. [SEAL.]
JOSEPH N. YOUNG. [SEAL.]

Sealed and delivered in presence of—
L. P. WILLIAMS.

Approved, December 11th, 1871.

D. K. CARTTER,
Chief Justice.

82 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the chief justice and justices of the supreme court of the District of Columbia, greeting:

Because, in the record and proceedings, as also in the rendition of a judgment in a plea which is in the said court before you, between the State of Maryland, for the use of Augustus M. Warfield & Susan E., his wife, Overton C. Boteler, & James Spence Boteler, by his next friend, Susan Boteler, is plaintiff, and John Carroll Brent, surviving executor of Norah Diggs, is defendant, (at law, No. 6719,) a manifest error hath happened, to the great damage of the said defendant, as by his complaint appears; and it being fit that the error, if any hath happened, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf; therefore, you are hereby commanded, if judgment be therein given, under your seal, distinctly and openly, to send the

record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the first Monday of December next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the law and custom of the United States should be done.

Witness, the Honorable Salmon P. Chase, Chief Justice of the United States, this eleventh day of December, in the year of our Lord, 1871, and of the Independence of the United States, the 96th.

R. J. MEIGS, *Clerk.*

DISTRICT OF COLUMBIA, *to wit:*

To the State of Maryland, suing for the use of Augustus M. Warfield & Susan E., his wife, Overton C. Boteler, & James Spence' Boteler, by his next friend Susan Boteler:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington, on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the supreme court of the District of Columbia, wherein John Carroll Brent, surviving executor of Norah Diggs, is plaintiff, and you are defendant, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, so that speedy justice be done the parties in that behalf.

Witness D. K. Cartter, chief justice of the said supreme court of the District of Columbia.

'871. Dec. 11. Service of citation acknowledged on behalf of plaintiffs.

S. S. HENKLE,
Att'y for Plff.

(Indorsed:) 6719. Law. State of Maryland, use &c., v. Brent. Writ of error and citation. Issued Dec. 11, 1871. Returned. R. J. Meigs, clerk.

83 OFFICE OF THE CLERK OF THE SUPREME COURT
OF THE DISTRICT OF COLUMBIA,
December 19th, A. D. 1871.

I certify that the foregoing is truly copied from originals on file and of record in this office, which originals together constitute the record and proceedings of the said supreme court of the District of Columbia, in the cause mentioned in the writ of error to which this certificate is annexed.

Witness my hand and the seal of said court the day and year aforesaid.

[SEAL.]

R. J. MEIGS,
Clerk S. C. of D. C.
By J. JAY CAMP,
Ass't Clerk.

(Indorsement on cover:) No. 563. John Carroll Brent, surviving executor of Norah Diggs, dec'd, plaintiff in error, vs. The State of Maryland, for the use of Augustus M. Warfield & Susan E., his wife, Overton C. Boteler, J. S. Boteler, by his next friend, Susan Boteler. Dist. of Columbia sup. court. Filed 21st December, 1871.

No.

IN THE

Supreme Court of the United States.

JOHN CARROLL BRENT, SURVIVING EXECUTOR OF NORAH DIGGS, DECEASED, PLAINTIFF IN ERROR.

vs.

THE STATE OF MARYLAND, FOR THE USE OF AUGUSTUS M. WARFIELD AND SUSAN E., HIS WIFE, ET AL.

Brief for Plaintiff in Error.

T. T. CRITTENDEN, COUNSEL.

In the Supreme Court of the UNITED STATES.

JOHN CARROLL BRENT, Surviving Executor of NORAH DIGGS, deceased.
Plaintiff in Error.

vs.

THE STATE OF MARYLAND, for the use of AUGUSTUS M. WARFIELD and SUSAN E., his wife, *et al.*

The original declaration in this cause was filed February 16th, 1870, (Rec. p. 1.) The amended declaration was filed on the 14th October, 1871, in which the plaintiff says: That the defendant's testatrix by her certain bond, became bound to the plaintiff in the sum of fifteen thousand dollars, to be paid by the defendant to the plaintiff, which said bond was subject to a condition there under written, in the words and figures following, to wit: "Whereas, by a decree of the Circuit Court of Prince George's County, bearing date on the twenty-fifth day of January, in the year eighteen hundred and fifty-three, and passed in a cause wherein Overton L. Warner is complainant, and Susan Boteler, administratrix of William Boteler, deceased and others, are defendants, the above-bound Daniel C. Digges has been appointed trustee to make sale of certain real estate in the proceedings in said cause mentioned: Now, the condition of the above obligation is such, that if the above

Daniel C. Digges do and shall well and faithfully perform the trust reposed in him by said decree, or that may be reposed in him by any future decree or order in the premises, then the above obligation to be void: otherwise to remain in full force and virtue in law." And the said Daniel C. Digges as such trustee, did make sale of the lands in said proceedings mentioned, and did report his proceedings in the premises to the court. And the said court, on the 11th day of April, 1860, ordered the said trustee to pay out of the funds in his hands arising from the sale of he lands refered to in the proceedings in said cause, to Elizabeth S. Boteler, seven hundred and four and thirty-nine and a quarter dollars, ($704 39¼;) to William A Boteler, seven hundred and four and thirty-nine and a quarter dollars ($704.39¼;) to Overton C. Boteler, seven hundred and four and thirty-nine and a quarter dollars, ($704.39¼;) and to James S. Boteler, seven hundred and four and thirty-nine and a quarter dollars, ($704.39¼.) Of which said order the said trustee had due notice, but he did not pay over said moneys to the above named parties, whereby the obligations of said bond became absolute.

And the plaintiff claims judgment for the sum of fifteen thousand dollars.—Rec. p. 4.

BOND.

Know all men by these presents that we, Daniel C. Digges, Norah Digges, and Charles Digges, all of Prince George's County, in the State of Maryland, are held and firmly bound unto the State of Maryland, in the full and just sum of fifteen thousand dollars, current money, to be paid to the said State of Maryland or its certain attorneys; to which payment, well and truly to be made and done, we bind ourselves, and each of us, our and each of our heirs, executors and administrators, jointly and severally firmly by these presents, sealed with our seals, and dated

the twelfth day of February, in the year one thousand eight hundred and fifty-three.

Whereas, by a decree of the Circuit Court for Prince George's County, in the State of Maryland, sitting as a Court of Equity, bearing date on the twenty-fifth day of January, in the year one thousand eight hundred and fifty-three, and passed in a cause wherein Overton C. Warner is complainant, and Susan Boteler, administratrix of William Boteler, deceased, and others, are defendants, the above bounden Daniel C Digges, has been appointed trustee to make sale of certain real estate in the proceedings in said cause mentioned.

Now, the condition of the above obligation is such, that if the above bounden Daniel C. Digges do and shall well and faithfully perform the trust reposed in him by said decree, or that may be reposed in him by any future decree or order in the premises, then the above obligation to be void, otherwise to remain in full force and virtue in law.

DANIEL C. DIGGES, [SEAL.]
NORAH DIGGES, [SEAL.]
CHARLES DIGGES, [SEAL.]

Signed, sealed, and delivered in presence of Norah T. Digges. Rec. p. 5.

PLEAS.

In the Supreme Court of the District of Columbia, this 24th day of February, A. D., 1870.

1. The defendant says, that the said Daniel C. Digges did not make sale of the lands in said proceedings mentioned.

2. And the defendant further says, that the said Daniel C. Digges did faithfully perform the trust reposed in him.

3. And the defendant further says, that the said Daniel C. Digges did pay over and account for the money which came to his hand by the proceeds of said sale.

4. And the defendant further saith, that the alleged cause of action did not accrue within twelve years prior to the institution of this suit.

5. And the defendant further saith, that plaintiffs for whose use this action is entered, have no cause of action or right or title to institute an action on said bond of said Digges. Rec. p. 2.

Case Stated.

State of Maryland for the use A. M. Warfield, et al. vs. Brent, executor of Digges. It is agreed in this case, that exhibit 1 is the trustee's bond on which this suit was brought; that the said Daniel C. Digges was the complainant's solicitor in the bill filed by the creditors of William Boteler, deceased, for a sale of his real estate.

That, as such trustee, he sold the real estate and received the proceeds as shown in the annexed Auditor's report and accounts, marked Auditor's report, "A, B, C, D, E and F."

That there is no evidence of notice of the ratification of account F; and the order of the court set forth in the declaration, other than what, if any, may be implied from the said trustee being solicitor for the complainant and trustee named in the proceedings and that the equitable plaintiffs in this case were minors, and had no guardians until 1866; that said trustee died about a year after the ratification of said account; that no demand was ever made, by or on behalf of the equitable plaintiffs, on said trustee, for the amounts awarded by said auditor's report. (Account "C" relates, one to the personal estate of Daniel C. Diggs, and

the other to the estate of William Boteler, and are, with all other papers under seal made part hereof.) And if upon this statement of facts the court shall be of opinion that the plaintiff is entitled to recover, judgment is to be entered for such sums as the court may award; but if the court shall be of opinion against the right of the plaintiff to recover, judgment shall be entered for the defendant.

Rec. p. 4.

Assignment of Errors.

The court below erred,

1. In deciding that the defendants in error could jointly maintain their action upon the bond sued on herein.

2. In deciding that the remedy on the bond sued on herein was at law.

3. In deciding that the trustee Daniel C. Diggs had sufficient notice of the auditor's report and its confirmation.

4 In deciding that no demand upon said trustee was necessary to enable the defendants in error to maintain their action on said bond.

Brief.

The court below decided this cause upon a case stated, Rec. p. 4 et seq., without the intervention of a jury.

1. This was a joint action upon the bond of the trustee, Rec. p. 5, made to the State of Maryland. The report of the auditor, confirmed by the court, ordered the trustee Daniel C. Digges to pay separately to each of the defendants in error a specific sum.

They sue jointly upon the bond, yet each claims a separate specific sum. Judgment was rendered for $15,000, the penalty of the bond to be discharged upon payment of a sum certain to each of the plaintiffs therein. Rec. p. 30

The claim of each was several and each could have sued upon the bond separately.

If the claim was joint this action cannot be maintained because Elizabeth S. Boteler was not made a party plaintiff.

Rec. p. 4. 1 Chitty on Pleading 9.

2. The remedy in this case is clearly in equity.

The cause originated in Maryland and the practice in the District of Columbia is substantially that of Maryland.

In the case of the State of Maryland use of Susan Boteler vs. Norah Digges et al. Goldsborough J. in delivering the opinion of the court said, "If, as in this case, the death of the trustee rendered it impossible to give notice or make demand of payment the sureties should not be placed in a position of legal responsibility which had not attached to the trustee at the time of his death. The notice to the administrators, and demand upon them, could not affect the sureties at law, nor could it affect the administrators who were no parties, but strangers to the proceedings in equity. In the case of Brooke vs. Brooke and others, 12 G. and J. 306, where many of the prominent facts were similar to those in this case, this court said the death of the trustee, under the circumstances in which it occurred, was such an accident as entitled the party seeking it to relief in equity in the manner in which he seeks it. We think there is another substantial ground why relief should be sought in equity. If, as is averred in the appellant's declaration, the trustee received the purchase money for the sale of the real estate, and there is nothing to show that it was kept separate and distinct from his own personal estate, it necessarily went into the hands of his administrators. By a bill in equity, the administrators being made parties they could be called to account for those funds and to pay and satisfy the appellant's claim in part or in whole, according to the amount of assets to be administered, and

to that extent, relieve the appellants from their responsibility, and they being made parties, the court could enforce the execution of their contract according to its obvious meaning and design. See the authorities cited by this court in their opinion in 12 G. and J. 321. Being therefore of opinion that there is no error in the ruling of the Circuit Court, the judgment will be affirmed."

21 Maryland Rep. 240.

See also Oelrich vs. Spain, 15 Wall, 211.

As to the 3rd & 4th Errors

In the case of Oyster vs. Annan, 1 Gill and Johnson, 452, Earle J. in delivering the opinion of the court, says :

"The trustee, as to the suit, is not in the situation of a common debtor who knows his liability and whose business it is to look to a compliance with his engagement; nor is his predicament like that of an executor or administrator, who represents the deceased testator or intestate, in all and each of his contracts and to whom the creditors individually are to exhibit their claims for settlement. The creditors are known to the trustee, but through the medium of the Court of Chancery, where they file their respective demands to be adjusted by the auditor, and where disputes among them are disposed of by the Chancellor, who finally determines what proportion of the sum of money reported is to be paid to each of them. This proceeding as to the trustee, is *res inter alios acta*, and, it is but reasonable, that when it terminates he shall be notified of the result, before any steps are taken against him, either by attachment or by action on his trustee's bond, against him and his sureties.

In the case of an order for distribution and payment, similar to this, to sustain the plaintiffs suit, it appears to us therefore, that he ought to aver and prove a service of the order on the trustee, and a demand of payment of the sum specified therein; and that without this notice so averred

in the proceedings, an action on the trustee's bond cannot be mantained.

See the People vs. Bryan, 3 Johnson's Cases, 53.

This doctrine was re-examined by the Court of Appeals and fully sustained in the case of the State for the use of Susan Boteler vs. Digges, 21 Maryland Rep. 240. Maryland Chancery Practice, 154.

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